

special knowledge or training with respect to handicapped pupils and their educational needs, or both. Parents and children may be represented by individuals with special knowledge or training with respect to handicapped pupils and their educational needs.

(b) A non-lawyer seeking to represent a party shall comply with the application process contained in N.J.A.C. 1:1-5.4 and shall be bound by the approval procedures, limitations and practice requirements contained in N.J.A.C. 1:1-5.5.

Amended by R.1995, d.176, effective March 20, 1995.
See: 27 N.J.R. 4(a), 27 N.J.R. 1179(a).

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:6A-9.1 Scheduling of hearing by Office of Administrative Law

(a) At the conclusion of an unsuccessful mediation conference or when mediation is not scheduled, the representative of the Office of Special Education Programs shall telephone the Clerk of the Office of Administrative Law and the Clerk shall assign a peremptory hearing date. The hearing date shall, to the greatest extent possible, be convenient to all parties but shall be approximately 10 days from the date of the scheduling call.

(b) The Office of Special Education Programs shall immediately transmit the matter to the Office of Administrative Law with the transmittal form. Copies of any motions or other documents shall be filed subsequently with the assigned judge.

Amended by R.1990 d.405, effective August 6, 1990.
See: 22 N.J.R. 1295(a), 22 N.J.R. 2262(b).

Revised section into subsections (a) and (b).

Deleted "agreed upon by all parties" referring to later date scheduling.

Added sentence; "If the parents ... by the clerk."

Amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Rewrote (a); and in (b), substituted a reference to scheduling calls for a reference to conferences.

Amended by R.2005 d.261, effective August 15, 2005.

See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).

Rewrote the section.

1:6A-9.2 Adjournments

(a) The judge may grant an adjournment of the hearing at the request of either party. Any adjournment shall be for a specific period of time. When an adjournment is granted, the deadline for decision will be extended by an amount of time equal to the adjournment.

(b) No adjournment or delay in the scheduling of the hearing shall occur except at the request of a party.

(c) If the first scheduled date for hearing is adjourned, a conference shall be conducted on or about the originally scheduled hearing date regarding the status of the case and to determine hearings dates.

(d) A hearing scheduled pursuant to (c) above shall not be adjourned except in extraordinary circumstances.

New Rule, R.1992 d.331, effective September 8, 1992.

See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).

Amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

In (a), inserted "of the hearing" following "adjournment".

Amended by R.2005 d.261, effective August 15, 2005.

See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).

Added (c) and (d).

SUBCHAPTER 10. DISCOVERY

1:6A-10.1 Discovery

(a) All discovery shall be completed no later than five business days before the date of the hearing.

(b) Each party shall disclose to the other party any documentary evidence and summaries of testimony intended to be introduced at the hearing.

(c) Upon application of a party, the judge shall exclude any evidence at hearing that has not been disclosed to that party at least five business days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

(d) Discovery shall, to the greatest extent possible, consist of the informal exchange of questions and answers and other information. Discovery may not include requests for formal interrogatories, formal admissions or depositions.

Amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Rewrote (a); and in (c), substituted a reference to business days for a reference to days.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. MOTIONS

1:6A-12.1 Emergency relief pending settlement or decision

(a) As part of a hearing request, or at any time after a hearing is requested, the affected parent(s), guardian, board or public agency may apply in writing for emergency relief pending a settlement or decision on the matter. An emergency relief application shall set forth the specific relief sought and the specific circumstances which the applicant contends

justifies under (e) below the relief sought. Each application shall be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

(b) Prior to the transmittal of the hearing request to the Office of Administrative Law, applications for emergency relief shall be addressed to the State Director of the Office of Special Education Programs, with a copy to the other party. The Department shall forward to the Office of Administrative Law by the end of the next business day all emergency relief applications that meet the procedural requirements in (a) above and which set forth on the face of the application and affidavits circumstances which would justify emergency relief under this section. Emergency relief applications which show no right to emergency relief or fail to comply with the procedural requirements above shall be processed by the Department in accordance with N.J.A.C. 1:6A-4.1.

(c) After transmittal, applications for emergency relief must be made to the Office of Administrative Law, with a copy to the other party.

(d) The Office of Administrative Law shall schedule an emergency relief application hearing on the earliest date possible and shall notify all parties of this date. Except for extraordinary circumstances established by good cause, no adjournments shall be granted but the opponent to an emergency relief application may be heard by telephone on the date of the emergency relief hearing. If emergency relief is granted without all parties being heard, provision shall be made in the order for the absent parties to move for dissolution or modification on two days' notice. Such an order, granted without all parties being heard, may also provide for a continuation of the order up to 10 days.

(e) At the emergency relief hearing, the judge may allow the affidavits to be supplemented by testimony and/or oral argument. The judge may order emergency relief pending issuance of the decision in the matter or, for those issues specified in N.J.A.C. 1:6A-14.2(a), may order a change in the placement of a student to an interim alternative educational setting for not more than 45 days in accordance with 20 U.S.C. § 1415(k)(2), if the judge determines from the proofs that:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

(f) Judges may decide emergency relief applications orally on the record and may direct the prevailing party to prepare an order embodying the decision. If so directed, the prevailing party shall promptly mail the order to the judge and shall mail copies to every other party in the case. Unless a party notifies the judge and the prevailing party of his or her specific objections to the order within five days after such service, the judge may sign the order.

(g) After granting or denying the requested relief, the judge shall either return the parties to the Department of Education for a mediation conference under N.J.A.C. 1:6A-4.1 if both parties consent to mediation or schedule hearing dates.

Amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

In (a), substituted "State Director of the Office of Special Education Programs" for "Department of Education, attention Division of Special Education" in the first sentence; and rewrote (e) and (g).

Amended by R.2005 d.261, effective August 15, 2005.

See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).

In (b) and (g), substituted "1:6A-4.1" for "1:6A-4.2".

Case Notes

Parents of handicapped student were not entitled to order requiring state agencies to fund residential costs. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1993, 823 F.Supp. 254.

District court lacked power to vacate administrative denial of funding for residential placement of handicapped student. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1993, 823 F.Supp. 254.

Parents of disabled student exhausted administrative remedies. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1992, 796 F.Supp. 767.

Emotionally disturbed child and his parent were "prevailing parties". *E.P. by P.Q. v. Union County Regional High School Dist. No. 1*, D.N.J.1989, 741 F.Supp. 1144.

Emergent relief denied where parents requested that kindergarten student's one-to-one aide remain entirely focused on the student, who suffered from a serious peanut allergy, rather than drawing back into a shadow role and also assisting other students as necessary. Parents did not satisfy the irreparable harm element of the emergent relief test, given the vice-principal's credible testimony that the shift in approach by the aide had not diminished vigilance concerning food safety in the classroom. *D.M. and S.C. ex rel. M.M. v. Howell Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4324-08, 2008 N.J. AGEN LEXIS 349 (June 2, 2008).

Child's need for immediate placement in private school warranted emergency relief. *J.G. v. Franklin Township Board of Education*, 97 N.J.A.R.2d (EDS) 13.

Child's grade placement was not issue subject to grant of emergency relief. *T.R. v. Mt. Olive Board of Education*, 96 N.J.A.R.2d (EDS) 125.

Emergency relief was inappropriate remedy for student denied access to educational program based on allegation of theft. *T.S. v. Lenape Regional High School District Board of Education*, 96 N.J.A.R.2d (EDS) 122.

Emergency relief request denied when change of classroom location was found not to constitute change of program. *C.M. v. Elizabeth Board of Education*, 96 N.J.A.R.2d (EDS) 75.

Emergency implementation of home schooling plan provided satisfactory interim education for mentally handicapped student during pendency of mediation process. M.F. v. Toms River Regional Board of Education, 96 N.J.A.R.2d (EDS) 67.

Emergency relief allowing classified student to participate in interscholastic sports denied when classified student making good academic

progress without requested relief. N.W. v. Brick Township Board of Education, 96 N.J.A.R.2d (EDS) 36.

School board's request for emergency relief to implement special education services granted where reasonable probability of board